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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,886	01/18/2001	Brian Keith Schmidt	0007056-0060/P5320/BBC	9319

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EXAMINER
BRUCKART, BENJAMIN R

ART UNIT	PAPER NUMBER
2155	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *17 August 2005*.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-6, 8-13 and 15-20* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) *1-6, 8-13 and 15-20* is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. _____.
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

Status of Claims:

Claims 1-6, 8-13, 15-20 are pending in this Office Action.

Claims 7, 14, 21 are canceled.

No new claims.

Claims 1, 4, 5, 8, 11, 12, 15, 18 and 19 are amended.

The amendment to the specification is accepted

The amendment to the drawings is accepted.

Response to Arguments

Applicant's arguments filed 10/25/04 have been considered but are moot in view of the

new ground(s) of rejection.

Applicant's invention as claimed:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6, 8-13, 15-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6944860. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Instant Application 09/765,886	Patented Related Case 6,944,860	Reasoning
A method for managing resources for an active computing environment	A method for managing an active computing environment	Both methods managing aspects of active computing environments
Encapsulating said active computing environment into a compute capsule	Encapsulating a plurality of active processes into a compute capsule	Compute capsule contains the active computing environment which is the processes (see next line)
The compute capsule comprising a plurality of processes and their associated system environment	Encapsulating system environment information related to said processes into said compute capsule	Processes and system environment into the capsule
The encapsulating comprising partition an operating system so that host-dependent and personalized elements of the active computer environment are moved into the computer capsule	Said system environment information including host specific data; Adding all of a user's processes and system environment to the capsule; Repartitioning some of file system state, device state, virtual memory and inter-process communication	Host specific and host dependent data both rely on the host; The operating system is viewed as a combination of file system, device, memory and communication because the O.S. relied on these to run. They are independent of the user. The user processes and environment comprises the personalized elements.
While shared resources and a state necessary to manage them are excluded	Repartitioning some of file system state, device state, virtual memory and inter-process communication	Repartitioning some of the file system, device, VM and IPC state implies leaving some behind and excluding it.
Assigning system resources to said compute capsule, thereby collectively assigning said system resources to said plurality of processes	Repartitioning some of file system state, device state, virtual memory and inter-process communication	These are system resources which are 'repartitioned' or reassigned into a capsule

Claims 1-3 and 6; 8-10, 13; 15-17, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,247,109 by Kleinsorge et al.

Regarding claim 1, a method for managing resources for an active computing environment (Kleinsorge: col. 4, lines 43-54) comprising:

encapsulating said active computing environment into a compute capsule (Kliensorge: col. 4, lines 43-54; encapsulated into partitions), the compute capsule comprising a plurality of processes and their associated system environment (Kliensorge: col. 5, lines 4-15; col. 1, lines 24-31), the encapsulating comprising partitioning an operating system so that host-dependant and personalized elements of the active computing environment are moved into the computer capsule (Kliensorge: col. 5, lines 4-15; col. 1, lines 24-31) while shared resources and a state necessary to manage them are excluded from the compute capsule (Kliensorge: col. 4, lines 63-66);

assigning system resources to said compute capsule, thereby collectively assigning said system resources to said plurality of processes (Kleinsorge: col. 4, lines 63-66).

Regarding claim 2, the method of claim 1 wherein said system resources comprise a guaranteed share of resources (Kleinsorge: col. 8, lines 20-34).

Regarding claim 3, the method of claim 1 wherein said assigning comprises applying a resource management algorithm (Kleinsorge: col. 3, lines 43-56; policy implemented).

Regarding claim 6, the method of claim 1 wherein said assigning comprises allowing user-level control over allocation of the system resources among the plurality of processes in the computer capsule (Kleinsorge: col. 1, lines 34-47; col. 3, lines 35-56).

Claims 4-5, 11-12, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable by U.S. Patent No. 6,247,109 by Kleinsorge et al in view of U.S. Patent No. 6,061,795 by Dircks et al.

Regarding claim 4,
The Kleinsorge reference teaches
the method of claim 1 but does not explicitly state restricting access from a network.
The Dircks reference teaches restriction said compute capsule from accessing a network (Dircks: col. 3, lines 22-37).
The Dircks reference further teaches the invention transparently and without interference allocates and facilitates access to resources to users (Dircks: col. 1, lines 33-67).
Therefore it would have been obvious to one of ordinary skill in the art to create the method of managing resources as taught by Kelinsorge while employing restricting access as taught by Dircks to transparently and without interference, allocate and facilitate access to resources to users (Dircks: col. 1, lines 33-67).
Claim 5 is rejected under the same rationale given above. In the rejections set forth, the examiner will address the additional limitations and point to the relevant teachings of Kleinsorge and Dircks.

Regarding claim 5, the method of claim 1 wherein said assigning comprises restricting said compute capsule from accessing a local file system (Dircks: col. 8, lines 1-13).

While the examiner understands the difference between a method, system and a computer program product, the examiner relates these to the hardware, features, and software in which the invention runs. Therefore claims 8-13 and 15-20 are rejected under the same grounds as their corresponding similar claims from 1-6.

1	8	15
2	9	16
3	10	17
4	11	18
5	12	19
6	13	20

REMARKS

Applicant has amended the independent claims to include limitations newly incorporated from a specification of a patented case that is incorporated by reference. The detail is a step in the right direction but further detail is needed to overcome the art. The examiner encourages defining the capsule through its interactions and users.

PRIOR ART

U.S. Patent No. 6,795,966 by Lim et al teaches checkpoints where state and setting information is saved at intervals or by triggers for restoration purposes.

U.S. Patent No. 6,698,017 by Adamovits et al teaches migration control of state and settings.

U.S. Patent No. 6,496,871 by Jagannathan et al teaches a mobile and migratable agent that agent protection among computers that have access.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Benjamin R. Bruckart whose telephone number is (571) 272-

3982. The examiner can normally be reached on 8:00-5:30PM with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin R Bruckart
Examiner
Art Unit 2155

brb

SALEH NAJJAR
PRIMARY EXAMINER